IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 22840 of 2007(R)

PETITIONER:

DAVID JOHN, AGED 50 YEARS,
S/O JOHN, JATHIKKATHOPPIL HOUSE,
ALUKKAL GARDEN, POOVANI, KOLAZHI,
THRISSUR.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS:
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1. CORPORATE MANAGER,
CMS SCHOOLS,(COCHIN AREA),
CMS HIGHER SECONDARY SCHOOL,
ROUND WEST, THRISSUR.

2. DISTRICT EDUCATIONAL OFFICER,
THRISSUR.

3. DEPUTY DIRECTOR OF EDUCATION,
THRISSUR.

BY GOVT. PLEADER SMT. M.R. SREELATHA
ADV. SRI.V.RAJENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO 22840/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF LETTER DT. 3.4.07 SENT BY DISTRICT PROJECT OFFICER, SARVA SIKSHA ABHIYAM, THRISSUR TO THE SECOND RESPONDENT

EXT.P1. COPY OF LETTER ISSUED BY SECOND RESPONDENT TO THE FIRST RESPONDENT

EXT.P1. COPY OF THE LETTER ISSUED BY FIRST RESPONDENT TO THE PETITIONER

EXT.P1. COPY OF REPLY TO EXT.P3 DT. 22.5.07 SENT BY PETITIONER

EXT.P1. COPY OF LETTER DT. 28.6.07 ISSUED BY SECOND RESPONDENT TO THE FIRST RESPONDENT

EXT.P1. COPY OF PROCEEDINGS DT. 2.3.07 OF FIRST RESPONDENT

EXT.P1. COPY OF ORDER DT. 17.7.07 OF THE THRID RESPONDENT

EXT.P1. COPY OF LETTER ISSUED BY FIRST RESPONDENT

EXT.P1. COPY OF MEMO OF CHARGES RECEIVED BY PETITIONER FROM THE FIRST RESPONDENT

RESPONDENTS EXHIBITS:

EXT.R1(A). COPY OF THE LETTER DT. 28.6.07 OF THE 1ST RESPONDENT TO PETITIONER

EXT.R1(B). COPY OF THE COMPLAINT DTD NIL

EXT.R1(C). COPY OF TEXPLANATION DT. 26.3.07 OF THE PETITIONER

EXT.R1(D). COPY OF TLR DT. 27.3.07 OF THE 1ST RESPONDENT TO 2ND RESPONDENT

EXT.R1(E). COPY OF BIO-DATA OF JIBOY DAVID

EXT.R1(F). COPY OF APPLICATION DT. 16.5.03

EXT.R1(G). COPY OF LETTER DT. 9.7.07 OF THE PETITIONER TO 3RD RESPONDENT

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 22840 OF 2007

Dated this the 10th day of August, 2007

J U D G M E N T

Having heard learned counsel for the parties and perused the materials on record, I am satisfied that the rival contentions raised by the parties need not be dealt with elaborately particularly, in the nature of the order that I propose to pass. Nevertheless it may be necessary to refer to some of the crucial aspects of the case very briefly.

2. Petitioner is the Headmaster of CMS Higher Secondary School under the corporate management of respondent No.1. He had assumed charge as Headmaster in the year 2001. He impugns Exts. P6, P7 and P8 orders in this writ petition.

3. By Ext.P6 proceedings dated July 2, 2007, the Manager had placed the petitioner under suspension pending enquiry with immediate effect on the allegation that he had "violated the time schedule fixed for final term evaluation by conducting Basic Science Examination of Standard VI in the forenoon of 29.3.07". It is seen stated further in Ext.P6 that the examination was scheduled to be conducted state wide in the afternoon of March 29, 2007. But the Headmaster (petitioner) by preponing the examination, had committed serious irregularities. In Ext.P6 the manager had noticed that the District Project Officer, SSA had requested the District

Educational Officer, Trissur to take punitive steps against the Headmaster for violating the examination schedule and tarnishing the sanctity of the examination". Therefore the DEO in turn had directed the Manager to take appropriate disciplinary action against the Headmaster.

4. Ext.P7 is the order passed by the Deputy Director of Education on July 17, 2007 by which the period of suspension of the petitioner was extended beyond 15 days.

5. Ext.P8 is the order issued by the manager on July 17, 2007 informing the petitioner that he had been suspended from service for a further period of three months from July 18, 2007 on the basis of fresh allegations raised against him and "preliminary enquiry into the matter".

6. It is on record that the manager had issued Ext.P9 memo of charges along with the statement of allegations to the petitioner thereafter. It is also the admitted position that petitioner had responded to the memo of charges.

7. It is contended by learned counsel for the petitioner that Exts. P6 to P8 are ex facie illegal, irregular and vitiated for reasons more than one. It is pointed out by the petitioner that the DEO had issued Ext.P2 communication to the manager on May 7, 2007 directing him to initiate disciplinary proceedings against the petitioner as provided under Rule 67 (c) of Chapter 14A KER. On receipt of the above communication, the manager had called for the explanation of the petitioner, as could be seen

from Ext.P3. Petitioner had submitted Ext.P4 reply before the manager. Thereafter, the DEO sent Ext.P5 communication to the manager directing him to take action, as instructed in Ext.P2. It was thereafter that the manager had issued Ext.P6 order of suspension.

8. Learned counsel submits that the above procedure adopted by the manager pursuant to the specific instruction by the DEO is totally contrary to the statutory mandates contained in Rule 67. Learned counsel places heavy reliance on the decision of this Court in *T.R. Gopalakrishnan Nair v. Manager, K.P.S.P.M.H. School, East Kallada* (1999 LAB I.C. 726).

9. The next contention raised by the petitioner is that the extension of the period of suspension beyond 15 days is also irregular in as much as it was done after expiry of the period of 15 days. The other contention raised by the petitioner is that he had been placed under suspension for a further period of three months on the basis of the so called, “fresh allegations”. In short the contention is that the entire procedure adopted by the manager is totally illegal and irregular.

10. I do not propose to deal with any of the above contentions in view of the submission made by learned counsel for the manager. He submits that whatever had been done was done only in compliance of the rules stipulated under the relevant Chapter of KER. If the petitioner takes exception to the sequence of events, which took place before the manager issued Ext.P6 order, the manager is prepared to recall the order of

suspension. Learned counsel fairly submits that the manager has never taken any vindictive attitude towards the petitioner. Since some irregularity was pointed out by the Project Officer in the conduct of the examination, the DEO had directed the manager to take action. If by inadvertence some procedural irregularity had crept in, the manager will not be averse to rectify it. It is also pointed out by learned counsel that the manager had noticed that there were other allegations also against the petitioner. Anyhow, he submits that the manager is prepared to start on a clean slate. The only prayer sought is that the right of the manager to take appropriate action against the petitioner in accordance with law may not be curtailed.

11. In the peculiar facts and circumstances, I do not find any reason why the manager shall not be given liberty to proceed against the petitioner, if the situation so warrants and if there are materials to do so. Therefore, the writ petition is closed recording the submission made by the learned counsel for the manager that Exts. P6 and P8 orders will be recalled. It is made clear that I have not considered the merit of any of the contentions raised by the parties nor have I found that the action of the manager was totally irregular. I hasten to add that the above view has been taken by me primarily in the peculiar nature of the fact situation available in the case.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007